

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
February 18, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:34 a.m. on Wednesday, February 18, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Mark E. Amodei

**COMMITTEE MEMBERS ABSENT:**

Senator Maurice E. Washington (Excused)

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

David W. Mincavage, Assistant City Attorney, City Attorney's Office, City of Henderson  
Mark Jacobs, Senior City Marshal, City Attorney's Office, City of Henderson  
Douglas D. Swalm, Chief Probation Officer, Department of Alternative Sentencing, East Fork Justice Court, Douglas County  
David Fraser, Executive Director, Nevada League of Cities and Municipalities  
Rory Planeta, Chief, Carson City Department of Alternative Sentencing  
Justin Roper, Marshal Commander, Reno Municipal Court  
Matthew Fisk, Court Administrator, Reno Municipal Court

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CHAIR CARE:

The hearing is opened on Senate Bill 84.

[SENATE BILL 84](#): Authorizes cities to create departments of alternative sentencing. (BDR 16-257)

DAVID W. MINCAVAGE (Assistant City Attorney, City Attorney's Office, City of Henderson):

I present my written testimony on behalf of the Henderson City Attorney's Office ([Exhibit C](#)).

We propose in sections 1 through 6 of the bill that the governing body be the county board or the city governing body. In Henderson that would be the City Council.

Our amendment ([Exhibit D](#)) proposes changing the word "shall" to "may." If a county does not have an alternative sentencing program, the city must supervise all offenders. Changing the term to "may" enables the City to supervise its own offenders and would not require it to supervise all county offenders.

Under section 8 of the bill, if a city has an alternative sentencing program, it supervises its offenders. If a city does not have an alternative sentencing program and the county has one, the county supervises the city's offenders. In Henderson, we have reached an agreement with the Municipal Court regarding our direct supervision program.

CHAIR CARE:

Please explain who we are talking about and the crimes with which they have been charged.

MR. MINCAVAGE:

In our program, we deal with domestic batteries, stalking, harassment and driving under the influence (DUI). When someone is sentenced in Municipal Court, a status check is conducted a year later to see if that offender has any additional arrests or violations of sentencing conditions. With our new direct supervision program, we can address that situation immediately. If we have supervision powers available under chapter 211A of *Nevada Revised Statutes* (NRS), we can prevent certain situations.

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SENATOR WIENER:

In your amendment, [Exhibit D](#), do you want the discretion to have someone administer the program or do you want the discretion to have the department at all?

MR. MINCAVAGE:

The question is who would administer the program. If the county does not have an alternative sentencing program, the city could supervise offenders in the county's jurisdiction.

SENATOR WIENER:

I read the amendment to mean that you establish the department, and you want the discretion regarding who would administer it.

CHAIR CARE:

As opposed to a case-by-case basis, which is the confusion.

SENATOR WIENER:

Do you want to have the department and then determine who would administer it, or do you want the discretion to establish the department at all?

MR. MINCAVAGE:

Sections 1 through 6 of the bill, which amends chapter 211A of NRS, refer to a program already established. Our amendment, the bill's section 7, subsection 2, paragraph (a), refers to NRS 4.372 and establishes, for example, if Clark County has an alternative sentencing program, an offender in Clark County Justice Court would be supervised by Clark County. If a county does not have an alternative sentencing program, the county would look to the city for supervision. With the word "shall" in section 7, if only one city in a county has an alternative sentencing program, that city is mandated to supervise for the entire county. The last section of the bill permits the county or municipal court without an alternative sentencing program to contract with a different department or organization for supervision.

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):

This provision actually goes to who is going to supervise someone where the county does not have a program and the city does have a program, in which case the city wants to have the option of supervising ... .

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SENATOR WIENER:

The program is in place, and then you have the discretion of whether you want to initiate use of it case-by-case.

MR. MINCAVAGE:

Yes, that is what we are talking about.

MARK JACOBS (Senior City Marshal, City Attorney's Office, City of Henderson):  
I present my written testimony in ([Exhibit E](#)).

CHAIR CARE:

Does everyone have a copy of the letter from Neil Rombardo ([Exhibit F](#))?

DOUGLAS D. SWALM (Chief Probation Officer, Department of Alternative Sentencing, East Fork Justice Court, Douglas County):

In 1995, the Legislature adopted chapter 211A of NRS. In early 1996, the Carson City Department of Alternative Sentencing was formed, followed by Douglas County in 1997. We supervise all misdemeanor defendants, and we do pretrial and presentence supervision of defendants charged with felonies. Before 1995, there were no court services below the felony stage. Alternative sentencing filled that gap. We work under the premise of accountability, protection of the community and rehabilitation. We have assisted many people to get drug treatment, and we monitor the supervision of domestic violence offenders.

Many of our cases are pleaded down to misdemeanors from felonies. We supervise over 140 DUI offenders, including first, second and notice of election programs. We supervise third-time DUI offenders in Douglas County and Carson City. Our program works well in Douglas County, Carson City and Washoe County.

The program has a low fiscal impact in the counties ([Exhibit G](#)). The recidivism rate is 4 percent to 5 percent, compared to the national average of 10 percent. In creating this department in 1995, no one overlooked the municipal courts. This program needs to continue with the same supervision and accountability to the offenders that Carson City, Washoe County and Douglas County are now providing.

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SENATOR MCGINNESS:

Are we covering everyone with this amendment?

CHAIR CARE:

What counties do not have departments of alternative sentencing, but have justice or municipal courts? Are we implicating anyone else or leaving anyone out?

DAVID FRASER (Executive Director, Nevada League of Cities and Municipalities):  
I do not know, and I will defer to the Association of Counties.

CHAIR CARE:

Are we doing something for cities outside of Clark County?

MR. SWALM:

This will enable any city to do that. This is fine with the Nevada League of Cities and Municipalities.

CHAIR CARE:

Under the proposed amendment, the "may" language is discretionary.

RORY PLANETA (Chief, Carson City Department of Alternative Sentencing):

We monitor house arrest programs. Last year we saved Carson City 7,000 days of incarceration. The city saved not only the \$700,000 it would have cost to jail these people, but the offender pays for the program. We have about 2,100 people in our caseload. We have five levels of supervision. The first is formal probation where we have about 400 people. This is the highest risk group, and they pay fees.

The second level is informal probation. They do not have to check in or pay supervision fees, but they have certain conditions we watch—DUI school, victim-impact panels, protection orders and restitution.

The third level involves those who do not have a suspended sentence, but we watch them and make sure they participate in counseling or drug programs.

The fourth level involves supervision of pretrial people and those on bail conditions. Anyone who bails out of jail must come to my office and check in.

We supervise them to make sure they do not reoffend while they are out on bail or pretrial conditions as well. The fifth level involves the felony DUI program.

I share our list of offenders with outlying agencies. They contact us if they have one of our offenders. We can order a hold on them, or they can come into our office the next day so we can deal with the situation.

I support S.B. 84 because as cities grow and counties cannot take all the caseload, cities need to have the same kind alternative sentencing available.

JUSTIN ROPER (Marshal Commander, Reno Municipal Court):

Washoe County has a Department of Alternative Sentencing. We support S.B. 84. It would be beneficial to the Reno Municipal Court to have its own alternative sentencing department. We have an estimated 1,600 candidates qualified to be monitored actively under alternative sentencing. Washoe County cannot handle the 1,600 because of staffing levels. All 1,600 of these candidates should be monitored. We are not addressing their core problems when they are sentenced and given conditions but not monitored.

The Reno Municipal Court is 50 percent to 70 percent of Washoe County's alternative sentencing caseload. The fees generated are going into the County's general fund. If we establish our own Department of Alternative Sentencing, the City could collect those fees.

We put a lot of money into law enforcement and the prosecution of individuals who commit crimes, which is a waste of money when people do not comply with the conditions set by the court. At any given time, the Reno Municipal Court has 35,000 to 45,000 outstanding warrants for failure to comply with court orders. This has a direct correlation to our lack of supervision.

MATTHEW FISK (Court Administrator, Reno Municipal Court):

Carson City, Douglas County and Washoe County have alternative sentencing programs. Lyon County recently started a program. The Reno Municipal Court is bursting at the seams with warrants and offenders who are under supervision but are receiving a superficial type of supervision. Many of these offenders are compliant on paper, but until we have the authority to cross the thresholds of their homes, we are not really helping them to engage in a true system of accountability and rehabilitation, which will lead to public safety. About

7 percent to 10 percent of the population commits 80 percent of the crimes, and 80 percent of those people have drug, alcohol or mental health issues.

We have 25,000 active warrants. We have 17 marshals who qualify to serve as alternative sentencing officers, but we do not have the authority to do so. We want to continue to work with the Washoe County program. The Reno Municipal Court recently moved to a new facility that was designed for this purpose. We reorganized our staff, implemented a new case management system and restructured our marshal's division.

Sentences should be enforced in the field. Judges are looking for immediacy and consistency in consequences. An alternative sentencing program can do this for us.

SENATOR WIENER:

What is the recidivism rate in the Reno area?

MR. FISK:

There is a 10-percent recidivism rate with the 200 people the Municipal Court has in the Washoe County program. Generally, 80 percent of crime involves substance abuse and/or a mental health-related component. About half the people who are on an alternative sentencing program successfully complete the program. Of the half who completes the program, 10 percent come back. When a person graduates from an alternative sentencing program, they have complied with all the conditions of their sentence in a cost-effective way.

CHAIR CARE:

There is no fiscal note on this bill. Mr. Mincavage, you testified this bill is enabling legislation. When you said this, was that with the contemplated amendment?

MR. MINCAVAGE:

Yes.

CHAIR CARE:

You said the bill will not cost any money unless the city chooses to create an alternative sentencing department. Mr. Fisk testified Reno Municipal Court has about 25,000 active warrants. What would be the criteria for the City of

Henderson to say it is going to do this? This would cost the City of Henderson, would it not?

MR. MINCAVAGE:

It would cost money if the City elects to do it. The legislation enables the governing body of the City to decide whether it wants to take on this program. A fiscal analysis would have to be done. We could use Douglas County and Carson City as models to see the cost and benefits received.

CHAIR CARE:

Does the City of Henderson just want to have this legislation in place in case the time comes when it really needs a program?

MR. MINCAVAGE:

Yes.

CHAIR CARE:

Hearing no opposition, I will entertain a motion.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 84.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR Care:

There being nothing further to come before the Committee, the hearing is adjourned at 9:16 a.m.

RESPECTFULLY SUBMITTED:

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Kathleen Swain,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

DATE: \_\_\_\_\_